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ACCESS TO ELECTORAL RIGHTS

PORTUGAL

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Access to Electoral Rights

Portugal

Claire Healy

1. Introduction

Portugal has been a democracy in its current form since the ‘Carnation Revolution’ of 25 April 1974¹ was consolidated in the Constitution of 25 April 1976 – the day on which the first national legislative elections of the new Republic were held. Prior to the revolution, Portugal had been governed by a dictatorship – the *Estado Novo* – since 1933. The new Constitution further declared the political autonomy of the Autonomous Regions of Madeira and the Azores. The first elections for the new Azorean and Madeiran Parliaments also took place in 1976.

The new Constitution declared Macao (on the southern coast of present-day China) a ‘territory under Portuguese administration’, which was changed in 1979 to a ‘Chinese territory under Portuguese administration.’ Subject to certain conditions, people born in or with a connection to Macao were attributed Portuguese citizenship until the end of 1999. In 1987, in the Joint Sino-Portuguese Declaration on the Issue of Macao, Portugal and China agreed that Macao would be transferred to Chinese sovereignty on 20 December 1999. Those residents of Macao who already had Portuguese citizenship were allowed to retain it (unlike the provisions for citizens of the former Portuguese colonies in Africa, see below). After the aforementioned date, however, a connection with Macao was not considered sufficient for attributing Portuguese citizenship. The end result has been that a significant proportion of the Portuguese expatriate electorate is resident in Macao (11,076 voters as of end 2011).²

Portugal’s former colonial activities in Africa and Brazil also have an impact on the composition of the Portuguese electorate. In general, those who resided in the former colonies in Africa³ before independence and who now live in Portugal either have Portuguese citizenship, if they have Portuguese ancestry, or were deprived of citizenship (and some became stateless as a result). Unless those born in the former colonies have subsequently acquired Portuguese citizenship, they can only avail of the same rights as other third-country national residents. Nevertheless, in relation to passive and active voting rights, citizenship of

¹ The Carnation Revolution (*Revolução dos Cravos*) is so-called because of the insertion of red carnations, distributed by a Lisbon florist, into soldiers’ guns to symbolise a peaceful revolution.

² The General-Directorate for Internal Administration published these figures in the government journal - Mapa nº 2/2012 (*Diário da República*, 2ª Série - nº 44 - 1 March 2012).

³ Portugal’s former colonies on the African continent are the present-day countries Angola, Cape Verde, Guinea (Bissau), Mozambique and São Tomé and Príncipe.

a Portuguese-speaking country (which includes all of Portugal's former colonies) and legal residence in Portugal grants certain rights, subject to reciprocity, and based on linguistic, cultural and historical ties.

The most significant special treatment is in relation to Brazilians who reside in Portugal and are granted the status of equality of political rights, who enjoy a form of internal quasi-citizenship based on the Treaty of Friendship, Cooperation and Consultation between the Portuguese Republic and the Federal Republic of Brazil, signed on 22 April 2000 and approved in Portugal by Parliament Resolution 83/2000 of 14 December.

Portugal joined the European Union (EU) in 1986, the same year as Spain, and is one of the EU Member States where the number of resident third-country nationals far exceeds the number of citizens of other EU Member States residing in the country, a feature that is not fully reflected in the composition of the electorate, due to restrictions on third-country nationals' voting rights. In fact, the number of all foreign residents who are actually registered to vote is strikingly low. According to the voting registers, as of 31 December 2011, 9,454,640 Portuguese citizens were registered to vote in-country, while only 11,301 non-Portuguese EU citizens (or second-country nationals) and 15,656 third country nationals were registered.⁴

Far higher numbers of Portuguese citizens resident abroad are registered to vote – 95,534 for the constituency of Europe and 144,275 for the constituency of the Rest of the World. The largest group of Portuguese expatriates registered to vote in Europe is in France (almost two-thirds of the European constituency), followed by Germany. Over half of the voters registered in the constituency of the Rest of the World are resident in Brazil, with the next biggest groups, in almost equal numbers, resident in Venezuela, the United States of America and China (Macao). These non-resident citizen voters elect two specific members of parliament per constituency, to represent the emigrant electorate in the national parliament (*Assembléia da República*).

National referenda have only been held in Portugal on the issues of regionalisation (once, in 1998) and abortion (twice, in 1998 and 2007). Though the formal regionalisation of continental Portugal is foreseen in the 1976 Constitution, it has never been implemented. The issue began to be seriously discussed from 1991 under the Cavaco Silva government, however, since in order to be included in the 1997 revision of the Constitution it had to be put to a referendum. The Law on the Creation of Administrative Regions (Law no. 19/98 of 28 August) was therefore put to a referendum in November of the same year, proposing the division of continental Portugal into eight administrative regions.⁵ The referendum was invalid, as slightly less than the required 50 per cent of the electorate voted. At any rate, a majority of the votes cast were against the proposal, widely considered as a protest vote against the government and politicians in general. The regionalisation debate is ongoing in Portugal, though the current government is not actively pursuing it.

The first ever national referendum in Portugal was in June 1998, shortly before the second, and was on the subject of abortion. This first referendum was also invalid, as a mere 32 per cent of the electorate cast their vote, with a very slight majority of votes cast against the legalisation of abortion (during the first ten weeks of pregnancy). The issue was once more put to a referendum in 2007. Again, the referendum was invalid as only 44 per cent of the electorate voted. This time, however, almost 60 per cent of votes cast were in favour of

⁴ The General-Directorate for Internal Administration published these figures in the government journal - Mapa nº 2/2012 (*Diário da República*, 2ª Série - nº 44 - 1 March 2012).

⁵ The eight proposed regions were: Entre-Douro e Minho; Trás-os-Montes e Alto Douro; Beira Litoral; Beira Interior; Estremadura e Ribatejo; Região de Lisboa e Setúbal; Alentejo; and Algarve.

legalisation. Before the referendum, the Portuguese Government, anticipating a low turnout, had stated that regardless of the number of votes cast, they would legislate in accordance with the will of the majority of those who went to the polls (technically violating referendum legislation) and that if the result was not binding, they would abide by the popular recommendation. Therefore Law no. 16/2007 of 17 April, which legalised abortion under the conditions that had been put to referendum, was passed by a wide majority in the national parliament.

In mid-December 2010, legislative reform covering European Parliament, national and local legislative, and national presidential elections, as well as national and local referenda, was passed (Organic Law no. 3/2010). The aim was to extend and harmonise early voting rights (including those granted to citizens temporarily abroad and expatriates). In relation to national presidential elections, the complicated residential requirements for expatriates for voting and candidacy were removed. Unlike in all other elections and referenda, the requirement to be allowed to vote for the President of the Republic had been regular residence in Portugal at some point within the previous fifteen years for expatriates living in the EU or Portuguese-speaking countries and regular residence within the previous ten years for all other expatriates. However, those who did not qualify to vote according to these criteria could be granted the right to do so by proving that they had spent at least 30 days in Portugal during the previous five years and had passed a Portuguese language test. The new version of Article 1-B of Decree Law no. 319-A/76 regulating the election of the President of the Republic now states that ‘*Portuguese nationality and electoral registration are sufficient proof of the existence of an effective connection with the national community.*’ As of December 2010, therefore, there are no residency requirements for voting or candidacy in the national presidential elections, nor in the European Parliament and national legislative elections.

In addition, the reform extended and harmonised the categories of voters who could vote early from abroad in all elections and referenda, except for the regional legislative elections in the Autonomous Regions of Azores and Madeira. Early voting from abroad, at embassies, consulates and other designated Portuguese state agencies, was extended to fire-fighters and agents of civil protection carrying out their functions abroad, and any other voters who cannot vote in-country due to their professional duties. Together with existing rights for military personnel and internal security forces, early voting from abroad for citizens temporarily absent was also extended to a standardised group of six categories.⁶ Only in the case of local legislative elections is there no possibility to vote from abroad, though there is the possibility for these same categories to vote early in their own parish.

On 6 September 2012, the Azores Regional Parliament unanimously approved a proposed law establishing a regional referendum, according to which a referendum could be convoked by the collection of 3,000 signatures. This will not enter in force, however, unless it is also approved by the national parliament.⁷ At the time of writing, however, the proposed

⁶ (1) Military personnel, militarised agents and civilians who are part of peacekeeping operations, technical-military cooperation or the equivalent; (2) doctors, nurses and other citizens who are part of humanitarian missions; (3) researchers and scholarship-holders at university institutions or the equivalent; (4) students enrolled at or attending educational institutions abroad under exchange programmes; (5) sick voters in treatment abroad and their companions; and (6) family members or the equivalent living abroad with any of the previous categories of individual.

⁷ Lusa (6 September 2012) “Açores: Assembleia legislativa aprova criação do referendo regional” in *Expresso*. Available at: <http://expresso.sapo.pt/acores-assembleia-legislativa-aprova-criacao-do-referendo-regional=f751537#ixzz2BXtwhnV7>.

law has become outdated and will need to be proposed anew to the national parliament. There is no regional referendum in Madeira.

2. Eligibility: Who has electoral rights under national law?

2.1 Citizen residents

2.1.1. Age

The age threshold for voting in all elections and referenda in Portugal is eighteen years. The age threshold for running as a candidate in all elections except the national presidential election is also eighteen years, as the principal qualifications for candidacy are to have the entitlement to vote and to be registered to vote. Candidacy for the position of the President of the Republic is an exception in that there is an age threshold of 35 years.

2.1.2. Mental disabilities

In all elections and referenda in Portugal, citizens who are subject to a sentence of judicial disability imposed by a court are disenfranchised. Furthermore, citizens with a mental disability are disenfranchised even if they are not subject to such a sentence, on the basis that they are clearly known to be mentally ill as a result of admission to a psychiatric facility or on foot of a declaration by two medical doctors.

2.1.3. Criminals

Prisoners *per se* are not disenfranchised. Only those criminals who have been banned from voting for a specific period of time by a judicial sentence *res judicata* (a decision that can no longer be appealed) are disenfranchised, as are all those who have been deprived of their political rights for a specific period of time by a decision *res judicata*.

2.2 Citizens abroad

2.2.1. Is residence in the country a general condition for the franchise?

Residence in continental Portugal, Madeira or the Azores is a strict condition only for voting in regional legislative elections, local legislative elections and local referenda. Voting in national referenda is technically only possible for expatriates when the subject of the referendum is of specific relevance to that category of citizens. The case of national legislative elections is a particular one because, although expatriates have the right to vote for members of parliament, they may only vote for four members of parliament specifically designated to represent Portuguese citizens residing abroad. Citizens abroad are generally enfranchised to vote in the European Parliament elections and are only excluded if they choose to vote in another EU Member State. All citizens abroad, provided that they are registered to vote (which they must do actively and voluntarily), may vote for the President of the Republic.

2.2.2. Citizen residents who are temporarily absent on Election Day

Votes can be cast from abroad by certain categories of voters who are temporarily absent on election day in European Parliament elections, national presidential elections, national legislative elections, national referenda and regional legislative elections. In the case of local elections and local referenda, this is not possible. In fact, the reform of early voting rights put in place by Organic Law no. 3/2010, mentioned above, extended out-of-country voting to a very broad category of ordinarily resident citizens, with the wording: *‘All voters [...] who, due to the need to represent any collective person from the public, private or cooperative sector, from organisations representing workers or economic activities, and other voters who, due to a reason arising from their professional functions, are prevented from travelling to their polling station on election day.’*

In addition, the following specific categories who are temporarily abroad may cast their votes abroad: a) Military personnel, militarised agents and civilians who are part of peacekeeping operations, technical-military cooperation or the equivalent; b) Doctors, nurses and other citizens who are part of humanitarian missions recognised as such by the Ministry of Foreign Affairs; c) Researchers and scholarship-holders at university institutions or the equivalent, recognised as such by the competent ministry; d) Students enrolled at educational institutions or who attend them under an exchange programme; (e) patients in treatment abroad and their companions; (f) spouses or the equivalent, relatives or similar, who live with the voters mentioned in a) to e).

If they are abroad, all of the above categories of voters can vote early at diplomatic or consular posts or delegations of Portuguese state ministries or institutions previously determined by the Ministry of Foreign Affairs. In the cases of a) and b), if these categories of voters cannot travel to the designated polling stations, the Ministry of Foreign Affairs may send a diplomatic official to them to collect their vote. Also, military personnel on mission abroad, agents of forces and services that have internal security functions under the terms of the law, as well as fire-fighters and agents of civil protection operating abroad, may vote early. All of these citizens must vote between ten and twelve days before the election.

2.2.3. Electoral rights of citizens who reside permanently abroad

Portuguese citizens who reside permanently abroad may vote in the European Parliament, national presidential and national legislative elections, regardless of the duration of their residence abroad and of whether or not they were born in Portugal. They may also cast votes from abroad in all of these elections, as well as in national referenda, but only if the topic of the referendum is relevant to expatriate citizens (which has never yet been the case). As in the case of citizens temporarily abroad, they may vote early at diplomatic or consular posts or delegations of Portuguese state ministries or institutions previously determined by the Ministry of Foreign Affairs.

According to a binding decision by the National Elections Committee in 1979, expatriate citizens who happen to be in Portugal on Election Day may not vote in-country. However, they may vote by post if they have requested that their ballot be sent to them at an address in Portugal. They then fill in the ballot and send it by post to their polling station abroad, at the latest on election day.

In relation to passive voting rights, the general rule in Portugal is that all those who are entitled and registered to vote in any election may also run as candidates in that election. Therefore, candidacy is theoretically possible for expatriate citizens in European Parliament, national presidential and national legislative elections.

2.3 Foreign residents

There is no general voting right in any elections or referenda for third-country nationals who do not come from countries with reciprocity agreements or cultural ties to Portugal.

Therefore, denizenship is not a term that can be considered to apply in Portugal, as no voting rights are based on residence alone.

Certain third-country nationals enjoy electoral rights in certain elections in Portugal, subject to bilateral reciprocity agreements, membership of the Community of Portuguese-Speaking Countries (CPLP),⁸ cultural and linguistic affinity in the case of Brazil (and former colonial relations pre-1822) and former colonial relations in the case of former Portuguese colonies in Africa.⁹ Only Brazilian citizens resident in Portugal and who have acquired the status of equality of political rights may vote in all elections and referenda. This is subject to the Treaty of Friendship, Cooperation and Consultation mentioned in the Introduction, which grants a form of quasi-citizenship to Brazilians resident in Portugal and to Portuguese resident in Brazil.

According to Article 17 of the Treaty, political rights are granted to Brazilians in Portugal (and Portuguese in Brazil), provided that they have been habitually resident in Portugal for three years and are granted the status of equality of political rights by the Portuguese Ministry of Internal Affairs. They enjoy these rights for as long as they are legally resident in Portugal. The acquisition of these rights implies the suspension of the equivalent rights for these migrants in Brazil. The Law on Elections for the President of the Republic (Decree-Law 319A/76 of 3 May) foresees the possibility of electoral rights for citizens of other Portuguese-speaking countries, provided that they benefit from a special status of equality of political rights pursuant to an international convention and in conditions of reciprocity which, however, currently only applies to Brazilians.

In local legislative elections, voting rights are granted to citizens of Portuguese-speaking countries, provided that Portuguese migrants in those countries have the same rights (reciprocity), and that they have had legal residence in Portugal for at least four years. This currently applies only to Brazilians and Cape Verdeans. In the case of other third-country nationals, they can vote provided that they grant the same rights to Portuguese migrants in their countries of origin and have had legal residence for at least five years. These countries are currently: Argentina, Chile, Iceland, Norway, Peru, Uruguay and Venezuela. Subject to reciprocity, citizens of Portuguese-speaking countries legally resident for more than two years and registered to vote in the municipality or parish where a referendum is being held for at least two years may vote in local referenda.

3. Electoral rights of EU citizens

3.1 Local elections

⁸ The member states of the *Comunidade de Países de Língua Portuguesa* (CPLP) are: Angola, Brazil, Cape Verde, Guinea (Bissau), Mozambique, Portugal, São Tomé and Príncipe and Timor-Leste. See www.cplp.org.

⁹ The *Países Africanos de Língua Oficial Portuguesa* (African Countries with Portuguese as the Official Language) are former colonies, all of which became independent from Portugal in 1973-75 in the wake of the Carnation Revolution and the end of the dictatorship in Portugal. Commonly referred to in Portugal by the acronym PALOPs, they are: Angola, Cape Verde, Guinea (Bissau), Mozambique and São Tomé and Príncipe.

EU Council Directive 94/80/EC was transposed into Portuguese law in 1996 by Law no. 50/96 of 4 September, altering the Law on Electoral Registration (no. 69/78 of 3 November) and the Law on Election to the Organs of the Local Authorities (no. 701-B/76 of 29 September). EU citizens residing in Portugal may vote in local elections, as long as Portuguese citizens enjoy the same rights in their Member State of origin. Voter registration for local elections by second-country nationals is voluntary and active, while for Portuguese citizen residents it is automatic. Although theoretically there is a derogation in the Electoral Law on the Organs of Local Authorities (Organic Law no. 1/2001 of 14 August) currently in force, in that the local voting rights of second-country nationals are subject to conditions of reciprocity, in practice all second-country nationals can vote in local elections, as their countries of origin have also transposed Directive 94/80/EC.

3.2 EP elections for EU citizens residing in the country

EU Council Directive 93/109/EC on European Parliament elections was partially transposed into Portuguese law the following year by Law no. 3/94 of 28 February, which amended the Law on Electoral Registration (Law no. 69/78 of 3 November), stipulating that voter registration was voluntary for citizens of other EU Member States resident in Portugal. It also required a declaration from such second-country nationals in order to register, to include their nationality, confirmed address in the relevant constituency, voting card for their previous constituency in their Member State of origin, a statement that they will only exercise their right to vote in the Member State of residence and that they have not been deprived of the right to vote in their Member State of origin.

The Directive was further transposed by Law no. 4/94 of 9 March, which amended the Electoral Law for the European Parliament (Law no. 14/87 of 29 April), stipulating that Portuguese citizen residents, Portuguese citizens abroad and citizens of other EU Member States resident in Portugal have the right to vote for Portuguese MEPs.

To coincide with the period during which these legislative changes were introduced, in order to facilitate the voter registration of those newly entitled to vote for Portuguese MEPs in the European Parliament elections of June 1994, a supplementary period of registration during 1-15 March 1994 was introduced for second-country nationals opting to vote for Portuguese MEPs. The National Elections Commission also organised an information campaign among second-country nationals in Portugal to inform them of this possibility.

3.3 EP elections for national citizens abroad

Portuguese citizens abroad who choose to elect Portuguese MEPs must vote in person at diplomatic or consular posts or delegations of Portuguese state ministries or institutions abroad previously determined by the Ministry of Foreign Affairs or, if strictly necessary, anywhere that the supervision of the voting process by at least two representatives of candidates can be assured. This is different to the case of national legislative elections (Decision approved unanimously by the National Elections Commission on 17 February 2009). The procedure for voting in European Parliament elections abroad is the same as in national presidential elections, and is therefore regulated by the Law on Elections for the President of the Republic (Decree-Law 319A/76 of 3 May). Expatriate voters must register in person with the Registration Commission at the consular district of their country of residence, if there is only an embassy, or in the area of electoral jurisdiction of the career consular posts established by a regulatory decree.

Voters are registered at the place of functioning of the registration agency corresponding to the residence indicated on their residence permit issued by the competent authority in the country where they live. In order to register, they must present their Citizen's Card or I.D. card and attest their residence with this document or a residence permit issued by the competent authority in the country where they live. The registration commissions abroad comprise career consular officials or, if there are none, diplomatic officials other than the ambassador, as well as one delegate nominated by each political party with a seat in parliament.

Voting begins two days before election day in Portugal and closes on the same day. The Voting Assembly responsible for the consular section or post where the expatriate citizen votes, in cooperation with representatives of the candidates, guarantees the conditions for freedom of voting during the three voting days, as well as the security of the ballot boxes.

3.4 Regional and other elections

Only Portuguese citizens registered to vote in the Autonomous Regions of the Azores and Madeira may vote in regional legislative elections. Neither EU citizens resident in the Autonomous Regions, nor EU and Portuguese citizens resident in continental Portugal may vote in the regional legislative elections.

4. Exercising electoral rights

4.1 National and regional elections

4.1.1. Voter registration

For all citizen residents, registration for all elections and referenda is automatic. The General-Directorate of Internal Administration is responsible for including all Portuguese citizens resident on national territory in the Database of Voter Registration (BDRE). The procedure is the same for all elections and referenda. Portuguese citizens residing abroad may not vote in regional legislative elections. For national elections, the procedure is the same as for European Parliament elections, detailed above.

All third-country nationals entitled to vote, apart from Brazilians who have the status of equality of political rights, must register in person. Voluntary registration with a Registration Commission or the Immigration and Borders Service (SEF) is carried out in the constituency corresponding to the domicile indicated on the valid residence permit of third-country nationals. For Brazilians who have the status of equality of political rights, registration is automatic and the responsibility of the State (through the BDRE).

Registration and processing of data depends on the consent of the voter and should be guaranteed in exercising the right to voluntary registration. After voluntary registration, the data are updated and consolidated through interaction between the information and management system for voter registration (SIGRE) and other appropriate information systems.

4.1.2. Casting the vote

Voting in person at the polling station in the district where the voter is registered is the standard procedure for citizen residents. Only certain citizens temporarily away from their voting district, such as military personnel, students, hospitalised patients and enfranchised prisoners may vote early at the parish council of the district where they normally reside. Voters must present their voting card and a valid I.D. Voters may only be accompanied when voting if they have a proven disability, and State health centres are required to stay open on voting day to facilitate the necessary certification of this disability. In February 2012, the National Elections Committee deemed it necessary to clarify that voters were not permitted to vote accompanied on the basis of old age, pensioner status or illiteracy, as these situations are not considered an illness or physical disability.

4.1.3. Running as candidate

Together with the requirements that apply to Portuguese candidates, third-country national candidates must also present a formal declaration of their nationality and habitual residence in Portugal, of the last time they resided in their country of origin and of the fact that they have not been deprived of the right to candidacy in their country of origin. They may further be required to present an attestation issued by the competent administrative authorities of the country of citizenship certifying that the candidate has not been deprived of the right to candidacy there and that they do not know of any incapacity. Candidates must also present their residence permit proving their residence in Portugal for the required number of years. Citizens of other EU countries may neither vote nor run as a candidate in the national and regional legislative elections.

4.1.4. Assimilated or special representation of citizens residing abroad

Portugal applies ‘special representation’ by allocating discrete seats in the national parliament to voters resident abroad, divided geographically into two constituencies. As mentioned above, each constituency elects two members of parliament, and the constituencies are Europe and the Rest of the World.

In addition, the Council of Portuguese Communities (Law no. 66-A/2007) was established as a consultative body of the government for policies related to emigration and Portuguese communities abroad. However, the Council is limited in its competences to issuing formal opinions on pieces of legislation; considering issues raised by the regional governments of Azores and Madeira in relation to Portuguese emigrants from the Autonomous Regions; producing information and issuing formal opinions on its own initiative on Portuguese emigrants; and formulating proposals and recommendations on the principles of emigration policy. 63 of the 73 members of the Council are directly elected. Voting rights for the Council are granted to Portuguese citizens living abroad, aged eighteen or over and registered at the consular post of their area of residence. As in the case of elections for the national parliament, those forbidden from voting, those mentally ill and those who have been deprived of their political rights (see precise definitions in section 2.1 above) may not vote. Voters may run as candidates if they are proposed in a complete list by a minimum of two per cent of the voters registered at the relevant constituency, up to a maximum of 250 voters.

4.2 Local elections

4.2.1. Voter registration

For Portuguese citizen residents, voter registration for local elections is the same as for all other elections – automatic. For EU citizens, voter registration is the same as for the European Parliament elections – voluntary. For third-country nationals, voter registration is the same as for national legislative elections – automatic for Brazilians with the status of equality of political rights and voluntary for other third-country nationals entitled to vote in local elections. Registration for the latter must be carried out with the local Registration Commission or the Immigration and Borders Service (SEF). Such voters are registered in the constituency corresponding to the domicile indicated on their valid residence permit.

4.2.2. Casting the vote

In local elections, the procedure for voting is the same as in all other elections, with the exception of the fact that voting is only possible in person and in-country for Portuguese citizen residents, citizens of other EU countries and enfranchised third-country nationals.

4.2.3. Running as candidate

All those eligible to vote in local elections are eligible to run as candidates. Non-Portuguese candidates must also make a declaration that they have not been deprived of active voting rights in their country of origin.

